

**DECLARATION OF JAMES R. DICKENS  
EXHIBIT D  
(PAGES 1-19)**

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

MYRNA I. JOHNSON,  
Plaintiff,

v.

FRED MEYER STORES, INC.,  
a Delaware corporation;  
and JAIME SAN MIGUEL,  
Defendants.

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Case No. J04-008 CV (JKS)

VIDEOTAPED DEPOSITION OF JOHNNA HAVARD  
Pages 1 through 115, Inclusive  
Taken: Wednesday, January 25, 2006  
Place: Juneau, Alaska

Ex. D, p. 1

1 relief assistant?

2 A. Yeah. It's like a -- because the way  
3 it goes, like fourth, third, second, and first. So  
4 fourth in charge; and then relief, which is also  
5 being third; and then second, which is apparel  
6 assistant; and then, of course, first, which is  
7 like the ALE manager.

8 Q. Okay. So you were effectively the  
9 third in line at the wasilla store?

10 A. Uh-huh.

11 Q. Okay.

12 A. I was. I did a lot of closings and all  
13 that, but I still was able to do a lot of my  
14 training with Mark. And then -- and then I got a  
15 call from Dennis saying they needed help in Juneau.  
16 And he said, "They need your managerial experience  
17 there because they have some issues within the  
18 store." And he said Jaime was going to be short  
19 managers. I said, "Okay. Sure. I'll go down  
20 there and help out."

21 I was there about two, three  
22 weeks, and then went down there, helped out, and  
23 then -- do you guys want me to go on?

24 Q. Well, let me ask some questions now.

25 A. Okay.

1 Q. So when you came -- what was the  
2 reason -- did you have any understanding as to why  
3 Juneau was shorthanded at that time?

4 A. He just told me that the assistant  
5 manager had to go on emergency leave, not really  
6 explaining fully why. But he just said they were  
7 going on emergency leave. And I said "Okay."

8 Q. And did he identify who the assistant  
9 manager was?

10 A. No. At the time I didn't know who she  
11 was.

12 Q. Okay.

13 A. I had no idea who anybody was down  
14 there.

15 Q. So when you got down to Juneau, what  
16 did you start doing and approximately when would  
17 this have been?

18 A. Sorry. I have to go back. Gosh. I  
19 moved there in 2002, April. February -- it might  
20 have been in March. I'm guessing.

21 Q. Okay. Of 2002?

22 A. Yeah. Because then I moved there in  
23 April.

24 Q. All right.

25 A. It was April. Yeah. I'm guessing

1 March. I was there for a few weeks. And then I  
2 performed the -- the assistant manager -- what they  
3 were supposed to do, their job.

4 Q. What shifts were you working during  
5 that time period; do you recall?

6 A. I had really good shifts,  
7 seven-to-fives. I can't remember if I worked  
8 weekends or not. It was a way back.

9 Q. Were you doing any recovery during that  
10 time?

11 A. I don't recall working any closings.

12 Q. Okay.

13 A. But I did work a lot of overtime while  
14 I was at that store to try and get the jobs done  
15 that they asked me to do, which they asked me to do  
16 seasonal resets for the departments. So I did a  
17 lot of overtime while I was there to get the job  
18 done.

19 Q. Now, during the time that you were  
20 working during that couple weeks at the Fairbanks  
21 store, were there problems with recoveries at night  
22 in terms of the quality of recovery or concerns  
23 regarding recoveries?

24 MR. DICKENS: Counsel, did you  
25 mean the Fairbanks store? As you said --

1 Q. Okay.

2 A. I mean, if -- it wasn't like Myrna --  
3 it wasn't just her that, you know he complained  
4 about recoveries. It was other -- other people.  
5 Like even myself. He complained about my  
6 recoveries too.

7 Q. Okay. Mr. San Miguel did?

8 A. Uh-huh.

9 Q. Okay. Now, during -- were you supposed  
10 to fly back to Fairbanks, like, on the weekend of  
11 March 16?

12 A. I was.

13 Q. Okay.

14 A. And then they couldn't -- because we  
15 were stuck in, like, Cordova or Yakutat. And they  
16 said, "Well, we are either going to sit here and  
17 wait it out, or you guys can fly back to Juneau."

18 So I was like, well, I'll just fly  
19 back to Juneau and then work some more hours. And  
20 I did. So I just got back and said, "What do you  
21 want me to do?"

22 Q. Okay.

23 A. And then continued to do the same  
24 project that I had done before.

25 Q. Okay. And what was that, if you

1 A. Sorry. The question again?

2 Q. Okay. My question was, you continued  
3 working for the -- at the Juneau store, Fred Meyer  
4 store, for some period of time --

5 A. Oh, a positive manner.

6 Q. -- in which it was a positive, sort of  
7 successful relationship. How long did that last?

8 A. For the Juneau store, about a year.  
9 And then I moved over to jewelry because of  
10 everything that was going on.

11 Q. Okay.

12 A. So -- well, actually -- I'm sorry. Let  
13 me rephrase that. Because I quoted how long I  
14 worked for apparel was about a year. I'd give it  
15 about six months in apparel that I was actually  
16 content with my job and everything that was going  
17 on.

18 Q. Okay.

19 A. And then it just kind of went downhill  
20 from there (indicating).

21 Q. Okay. What happened?

22 MR. DICKENS: Same objection.  
23 I'll object to the line of questioning.

24 MR. CHOATE: You can have a  
25 continuing objection. Sure.

1 MR. DICKENS: That's fine. Go

2 ahead.

3 A. Let's see. I didn't feel -- anything I  
4 was doing wasn't -- wasn't correct. Like my  
5 recoveries weren't good either.

6 BY MR. CHOATE:

7 Q. Who said that?

8 A. Jaime. He wanted me to stay later to  
9 get the job done. I refused to stay later.

10 Q. By "later," meaning -- what do you  
11 mean?

12 A. Till 2:00 in the morning if it had to  
13 be that. I refused because of where I lived and  
14 the conditions, and I wasn't going to stay that  
15 late. And especially with the crew that I had.  
16 Like people are sick, or -- and then they got to do  
17 the cash register. You are down to so many people,  
18 and then you still have to do your job, do the  
19 manager job and do their job.

20 So, you know, you do what you can  
21 in the time you are given and do the best job you  
22 can do. And then when it is time to go home, you  
23 go home.

24 Q. Okay. Before this time period you are  
25 talking about, when you couldn't do anything right

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1 expectations, I guess, of what an apparel assistant  
2 manager should do, when I thought I was  
3 performing -- or getting better in the position I  
4 was in.

5 There was, I mean, just e-mails  
6 back and forth, either that or, you know, he'd  
7 either argue about maybe something that was going  
8 on on the floor. You know, he wanted it done this  
9 way. I thought it maybe should have been this way.

10 Q. Did --

11 A. You know, stuff like that, or . . .

12 Q. Was there a difference in the quality  
13 of your work?

14 A. From when?

15 Q. Was there anything happening in the  
16 quality of your work which would cause Mr. -- to  
17 your knowledge, cause Mr. San Miguel to suddenly  
18 become much more critical of you?

19 A. No, I don't think there was a  
20 difference at all.

21 Q. When you were trying to assess --

22 A. I was trying to do better.

23 Q. Okay. When you were trying to assess  
24 what was going on, what was happening, did you have  
25 any -- did you sort of reach an internal opinion as

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1 took credit for all of that.

2 Q. And he didn't indicate that you had  
3 been responsible or participated in that?

4 A. No.

5 Q. Did that upset you?

6 A. Oh, very much. It was -- I was very  
7 upset about it.

8 Q. Now, when did you switch from apparel  
9 to another department at Fred Meyer?

10 A. About a year. I guess when I could get  
11 over there, but the manager over there, he actually  
12 he came and got me.

13 Q. And who was that?

14 A. Bill Ledoux.

15 Q. And when you made the switch, it  
16 actually cost you money?

17 A. It did. It hurt me. I took a \$5 pay  
18 cut. And then, of course, I couldn't do all my  
19 bills, so I became in debt. I had to tell my  
20 parents I became in debt and moved back home. And  
21 that was about a year after being in jewelry. I  
22 just couldn't afford it anymore.

23 Q. Now, you have previously signed an  
24 affidavit dated February 12, 2004. It is marked as  
25 Exhibit 31 to our depositions.

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1 A. Yeah.

2 Q. Okay. Now it also says in that  
3 paragraph, "I could not help but notice that  
4 San Miguel would eye attractive women who walked by  
5 him in the Juneau store." Is that part of what  
6 you've already talked about?

7 A. Yeah, what I talked about previously.

8 Q. Okay. You say, 21, "It also became  
9 obvious to me that San Miguel preferred Hispanic  
10 employees over Asian employees. For example" --

11 A. I thought so. Like I said, there was,  
12 you know, people who -- that didn't get  
13 reprimanded, that I maybe thought should have  
14 either gotten spoken to or the issue resolved.  
15 Like Minerva Cortez, for example. She'd either  
16 done a lot of things, or she didn't do her job when  
17 she was closing. I mean, I had people come and  
18 talk to me and say, "well, she's not showing up.  
19 How come she doesn't get reprimanded for it?" And  
20 I said, "well, I have talked to Jaime about it,  
21 but, I mean, I have done what I could do."

22 Q. Did Ms. Minerva Cortez have a pattern  
23 of not showing up for work?

24 A. In the short time I was there?

25 Q. Yes.

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1 A. She did.

2 Q. Okay. And was she ever reprimanded for  
3 that?

4 A. No. She still came to work. And, to  
5 me, that meant she wasn't reprimanded. Because the  
6 way that Fred Meyer is set up is, if you don't  
7 show -- if you do a no-show, no-call, then you are  
8 terminated.

9 Q. Was she terminated for that?

10 A. No.

11 Q. Okay. Is Ms. Cortez, to your  
12 knowledge, Hispanic?

13 A. Yeah.

14 Q. Okay. It says at 22, "On Myrna's last  
15 day in the Juneau store, I saw her crying in the  
16 stockroom and observed that she was very upset."  
17 Is that correct?

18 A. Yes.

19 Q. Okay. And, again, you don't know what  
20 she was upset about at that time, did you?

21 A. No.

22 Q. Okay. At 23, you say, "After Myrna's  
23 last day at work, San Miguel remarked that Myrna  
24 was not doing her job, but he didn't elaborate on  
25 that." Is that correct?

1 vendor --

2 A. Uh-huh.

3 Q. -- at the store, that Mr. San Miguel  
4 informed you to tell her -- or instructed you to  
5 tell her that she was not to service the account  
6 unless he was present in the Juneau store?

7 A. That is correct.

8 Q. Okay. And do you recall exactly how  
9 that went about or how it happened?

10 A. She was -- she would do a reset or  
11 something on the sunglasses, or fill them up, or --  
12 but she also did, I think, the furniture. She also  
13 was the vendor for that as well.

14 And I don't know if it was because  
15 of the thing they had there, that it was just out  
16 of anger. He said that she was not to come in  
17 the -- because he said that -- "Just let her know  
18 she's not supposed to come here unless I'm here."

19 And I have been a vendor before,  
20 and all you have to do is get a manager to sign off  
21 on it, that you were there, and then you send your  
22 time sheet in.

23 Q. Did you have any reason or any  
24 knowledge as to why Mr. San Miguel would have  
25 placed that restriction on Myrna Johnson's access

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1 to train because he didn't hire anybody.

2 Q. So what did that mean in terms of your  
3 work?

4 A. My work load became more because either  
5 I didn't have a crew to support me -- sometimes I  
6 might have had one person on graveyard to get the  
7 job done, and it was a new employee. And when you  
8 have a new employee, well, you have to train them.  
9 You got to walk them through everything, and you  
10 still got to do the job that you're supposed to do  
11 and still try and, you know, do the other people's  
12 job that weren't there.

13 Q. Did you ever state or tell  
14 Mr. San Miguel that you thought you were being  
15 punished in some fashion for being given that  
16 shift?

17 A. I did. I thought I was.

18 Q. And what was his response?

19 A. He, basically, was like "Tough." You  
20 know, that's what -- "I'm the manager. I make the  
21 schedule." I mean, he used that the term a lot.  
22 "I'm the manager. I'm the manager." It's like,  
23 well, I already know you are the manager. You  
24 don't have to tell me that.

25 So I did feel like I was being

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1 punished. I don't -- I didn't really understand  
2 why because I thought either the issue of -- you  
3 know, yes, I did date an employee. I felt that was  
4 pushed behind us, and he said it too. But I still  
5 felt like I was being punished the whole time.

6 Q. Now, graveyards would be what -- what  
7 time period?

8 A. About ten-to-eights, or

9 Q. 10:00 p.m. --

10 A. 10:00 p.m. to, like, 8:00 a.m. or even  
11 7:30, because you just take a half hour lunch.  
12 Managers, of course, have to work, like, an extra  
13 hour, usually. That's just how they do it at Fred  
14 Meyer's. And sometimes I would work longer than  
15 that.

16 Q. It says that when he put you on the  
17 less favorable evening shift, he would give you a  
18 long list of things that needed to be done which  
19 could not possibly be completed during the shift.  
20 Do you recall that?

21 A. I do. He would always say, you know,  
22 "Here's the tour. You need to get these done."  
23 And in the course of it, I didn't have time to get  
24 them done, or just -- it's like he wouldn't  
25 understand why I didn't get them done.

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1 well, he either didn't take into  
2 consideration that I might have had an employee  
3 call in sick, or the employee then had to go do the  
4 cashier, or another employee went home because of  
5 something, or -- like no kids, no babysitters.

6 It's like you always have -- you  
7 always have issues that resolve in the store, and  
8 then you have to, then, do their job to still meet  
9 the expectations of how it should look in the  
10 morning, when customers come in.

11 Q. Okay. And given the time you had --

12 A. Uh-huh.

13 Q. -- did you do the very best job you  
14 could?

15 A. I did.

16 Q. Okay. And had that job, before you got  
17 engaged, always been acceptable?

18 A. It was acceptable before, yes.

19 Q. Okay. And now it wasn't?

20 A. No.

21 Q. Okay. At 31 in your affidavit, it  
22 says, "San Miguel would then criticize me for not  
23 completing all the items on his long list. On one  
24 occasion, he told me I needed to work until 2 a.m.  
25 to finish the tasks assigned to me." Is that

1           A.       And then I did turn a position down  
2       once they just told me I had it. And then they had  
3       other applicants that they were going to put in the  
4       job anyway.

5           Q.       When you came to the Juneau store as a  
6       temporary in early March 2002, did you tell people  
7       you had a boyfriend up in Wasilla?

8           A.       I did have a boyfriend, yes.

9           Q.       When you came to Juneau and became  
10      engaged to Jeff Smith, was that your first  
11      engagement?

12          A.       No, I had been engaged before.

13          Q.       And did you and Mr. Smith get married?

14          A.       No.

15          Q.       All right. Have you been engaged  
16      since?

17          A.       No.

18          Q.       How long did you expect to stay when  
19      you came down on that temporary situation?

20          A.       Just a few weeks. About -- probably,  
21      what, three to four weeks.

22          Q.       And as I understand your earlier  
23      testimony, you enjoyed the position as a first  
24      assistant in the Juneau store?

25          A.       Uh-huh. I did. Very much.

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1 Q. And so did you initiate the discussion  
2 with Mr. San Miguel that you would like to come to  
3 Juneau if there was an opening as a first  
4 assistant?

5 A. If it came open, then, yes, I would.

6 Q. So how did you initiate that  
7 discussion?

8 A. I said -- I can't remember. Upon  
9 leaving, you know, I said if it did come open, then  
10 I would be willing to come down here.

11 Q. Okay. And did Mr. San Miguel -- how  
12 did he respond?

13 A. Him and Fred Sayre were both happy, and  
14 they were like, "Yeah, I'd love to have you down  
15 here. We saw how you worked. You were good."

16 Q. The way I interpret that -- tell me if  
17 it's correct -- they were complimenting you on the  
18 work you had done, and basically were telling you  
19 if an opening occurred, they'd be happy to consider  
20 you for it. Is that what you concluded too?

21 A. Uh-huh.

22 Q. That's a yes?

23 A. Yes.

24 Q. Okay. One of the things, in this  
25 situation, you have to answer yes or no.

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1 best.

2 Q. I understand, and we appreciate that.  
3 It's sometimes hard to remember things four years  
4 earlier.

5 A. That is correct. It was posted.

6 Q. And you saw that?

7 A. Yes.

8 Q. Okay. Look at page 2, which is the job  
9 posting for the position available. If you look in  
10 the upper right-hand corner, it says "Position  
11 available 3-20-2002 through 3-27-2002."

12 A. Oh, this one here. Yes.

13 Q. All right. And did you formally apply  
14 during that week time frame of March 20, 2002, and  
15 March 27, 2002?

16 A. I can't remember.

17 Q. What is the normal procedure, in your  
18 experience at Fred Meyer, when an applicant wants  
19 to apply for an opening which has been posted?

20 A. The normal procedure -- I mean, all I  
21 can tell you was, you do -- like I do a verbal and  
22 I also put it in writing. And then you send it,  
23 and then either put it on -- I always put a copy on  
24 the manager's desk of, like, my resumé and, you  
25 know, basically, a cover letter, all that stuff.

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1 In this -- in this case, though,  
2 that -- that was not done.

3 Q. What was not done?

4 A. The -- the resumé and all that, the  
5 resumé and cover letter.

6 Q. Did you have an interview with  
7 Mr. San Miguel in Juneau --

8 A. Not a --

9 Q. -- at the Juneau store?

10 A. It wasn't like a normal interview, like  
11 I would go for, to -- let's say if I applied here  
12 or with you or anybody.

13 Q. Well, in fact, you had sort of had an  
14 interview, because you'd had about 18 days of  
15 experience, hadn't you?

16 A. Yeah. So . . .

17 Q. All right. And you were told there  
18 were other applicants?

19 A. I was told there was one other, but no  
20 names, of course, so -- I don't really need to know  
21 that.

22 Q. Have you ever hired people or did you  
23 hire people while you were at Fred Meyer?

24 A. I did.

25 Q. At what level?